

**KENTUCKY PERSONNEL BOARD
MINUTES OF SEPTEMBER 11, 2015**

1. The regular monthly meeting of the Kentucky Personnel Board was called to order by Chairman Doug Sapp on September 11, 2015, at approximately 9:30 a.m., 28 Fountain Place, Frankfort, Kentucky.

Board Personnel Present:

Wayne "Doug" Sapp, Chairman
Larry B. Gillis, Vice Chairman
David B. Stevens, Member
David F. Hutcheson, Jr., Member
Tommy W. Chandler, Member
Amanda Cloyd, Member
Mark A. Sipek, Executive Director and Secretary
Boyce A. Crocker, General Counsel
Cynthia Perkins, Administrative Section Supervisor

2. **READING OF THE MINUTES OF REGULAR MEETING HELD AUGUST 14, 2015**

The minutes of the last Board meeting had been previously circulated among the members. Chairman Sapp asked for additions or corrections. Dr. Stevens moved to approve the minutes, as submitted. Judge Chandler seconded and the motion carried 6-0. The Board members signed the minutes.

3. **EXECUTIVE DIRECTOR'S REPORT**

Mr. Mark Sipek advised that the posting for Administrative Specialist III will close on Tuesday, September 15, 2015; and he hopes to fill the position as soon as possible.

Mr. Sipek stated that there has been an increase in appeals in July (43 appeals) and August (44 appeals). This is the most appeals filed with the Personnel Board in quite a long time; so the staff has plenty of work to do.

At the conclusion of Mr. Sipek's report, Chairman Sapp called for the Personnel Cabinet's report.

4. **PERSONNEL CABINET'S REPORT**

The Hon. Dinah Bevington, Executive Director, came forward to present the Personnel Cabinet's report.

Ms. Bevington stated that Public Service Appreciation week, by proclamation of the Governor, is October 5 to October 10, 2015; to recognize employees for their dedication, commitment and services they provide. The Governor's Ambassador Awards will be presented on Wednesday, October 7, 2015, at the Civic Center.

Ms. Bevington advised that the Personnel Cabinet launched a Facebook page which is a great resource for information from job postings to wellness opportunities.

Ms. Bevington stated that regulation amendments are proceeding and will be effective October 1, 2015. 101 KAR 2:034, Classified Compensation regulation, will be effective in November, 2015. A memo will go out to all the agencies.

Employee interim evaluations for the months of May through August are going on and supervisors are to complete them by the end of September.

5. **MOTIONS**

Angelica Dailey v. Justice and Public Safety Cabinet (Corrections)

- Appellee's Motion for a New Hearing
- Appellant's Response in Opposition to Appellee's Motion

Present for oral arguments on the motions were the Hon. L. Dustin Riddle, counsel for Appellant; and the Hon. Stafford Easterling, counsel for Appellee.

Mr. Sipek advised that Warden Steve Haney's testimony was not recorded by audio recording during the evidentiary hearing. He stated it was appropriate for the Board members to go into a brief closed session to consider Appellee's Motion for a New Hearing, Appellant's Response on Opposition, and oral arguments on the motion.

6. **CLOSED SESSION**

Mr. Gillis moved that the Board go into Executive Session for the purposes of discussing complaints, proposed or pending litigation, and deliberations regarding individual adjudications. Mr. Hutcheson seconded. Chairman Sapp stated that the motion had been made and seconded for the Personnel Board to retire into closed Executive Session, passed by a majority vote of the members present, with enough members present to form a quorum. Pursuant to KRS 61.810(1) (c), (f), and (j), the Kentucky Open Meetings Act, the Board will now retire into closed Executive Session. Specific justification under the Kentucky Open Meetings Act for this action are as follows, because there will be discussion of proposed or pending litigation against or on behalf of the Board; and deliberations regarding individual adjudication. The motion carried 6-0. (9:50 a.m.)

Mr. Gillis moved to return to open session. Dr. Stevens seconded and the motion carried 6-0. (10:20 a.m.)

Angelica Dailey v. Justice and Public Safety Cabinet (Corrections)

Mr. Hutcheson moved to deny Appellee's motion for a new hearing. Dr. Stevens seconded and the motion carried 6-0.

Mr. Hutcheson moved to remand this matter to the active docket specifically for the Hearing Officer to take Warden Steve Haney's testimony due to failure to record audio testimony pursuant to KRS 13B.090(6). Additional testimony or exhibits shall only be admitted upon a showing of good cause. Once completed, the Hearing Officer shall submit new Findings of Fact, Conclusions of Law, and Recommended Order and the process (exceptions and request for oral argument) begin again. Judge Chandler seconded and the motion carried 6-0.

Chairman Sapp then asked the parties to come forward for the first oral argument.

7. ORAL ARGUMENTS

**A. ~~Angelica Dailey v. Justice and Public Safety Cabinet (Corrections)~~
~~(Request by Appellee) Moved from August - REMANDED~~**

B. Donald Arvin and Michael Grubbs v. Transportation Cabinet, Personnel Cabinet and Clarence Lawson (2014-109 and 2014-095) (on remand from Board)

Present for oral arguments were Appellant Michael Grubbs; counsel for Appellee, the Hon. William Fogle; counsel for Appellee Personnel Cabinet, Rosemary Holbrook; and Intervenor Clarence Lawson. Appellant Grubbs stated that Appellant Arvin could not be present due to a medical issue; however, he was fine if the oral argument proceeded without him. After presenting oral arguments, the parties answered questions from the Board.

C. Johnny Ware v. Cabinet for Health and Family Services (2014-316)

Present for oral arguments were Appellant, Johnny Ware, and counsel for Appellee, the Hon. Rebecca Wooldridge. After presenting oral arguments, the parties answered questions from the Board.

8. **INVESTIGATIONS**

Public Protection Cabinet

--Request from Brian Vandenburg concerning the hiring of a new State Electrical Inspector

--PPC Response

The Hon. Latasha Buckner was present for the Public Protection Cabinet. Mr. Vandenburg reported to staff that he would not be able to attend the meeting.

Mr. Hutcheson moved to deny the request for investigation. Dr. Stevens seconded and the motion carried 5-0, with Mr. Gillis recusing.

9. **SECOND CLOSED SESSION**

Dr. Stevens moved that the Board go into Executive Session for the purposes of discussing complaints, proposed or pending litigation, and deliberations regarding individual adjudications. Judge Chandler seconded. Chairman Sapp stated that the motion had been made and seconded for the Personnel Board to retire into closed Executive Session, passed by a majority vote of the members present, with enough members present to form a quorum. Pursuant to KRS 61.810(1) (c), (f), and (j), the Kentucky Open Meetings Act, the Board will now retire into closed Executive Session. Specific justification under the Kentucky Open Meetings Act for this action are as follows, because there will be discussion of proposed or pending litigation against or on behalf of the Board; and deliberations regarding individual adjudication. The motion carried 6-0. (11:10 a.m.)

Dr. Stevens moved to return to open session. Mr. Gillis seconded and the motion carried 6-0. (12:00 p.m.)

10. **CASES TO BE DECIDED**

The Board reviewed the following cases. At that time, the Board considered the record including the Hearing Officers' findings of fact, conclusions of law and recommendations, any exceptions and responses which had been filed, and oral arguments where applicable.

A. **Angelica Dailey v. Justice and Public Safety Cabinet (Corrections) (2015-321)**
Remanded (See above motions.)

B. **Donald Arvin and Michael Grubbs v. Transportation Cabinet and Clarence Lawson (2014-109 and 2014-095) (on remand from Board)**

Judge Chandler, having noted Appellee Transportation Cabinet's exceptions; Appellant Grubb's response, Intervenor's exceptions and oral arguments, moved to defer this matter to the next Board meeting. Ms. Cloyd seconded and the motion carried 6-0.

C. **Johnny Ware v. Cabinet for Health and Family Services (2014-316)**

Mr. Gillis, having noted Appellee's exceptions and oral arguments, moved to defer this matter to the next Board meeting. Ms. Cloyd seconded and the motion carried 6-0.

D. **Richard Chad Lanham v. Cabinet for Health and Family Services (2015-023)**
Deferred from August

Mr. Gillis moved to accept the Final Order, as attached to the minutes, sustaining the appeal to the extent of reducing the ten-day suspension to a five-day suspension. Dr. Stevens seconded and the motion carried 6-0.

E. **Phoebe Powell v. Justice and Public Safety Cabinet, Department of Corrections (2014-184)**

Mr. Gillis moved to accept the recommended order sustaining the appeal to the extent therein. Dr. Stevens seconded and the motion carried 6-0.

Show Cause Order – No Response Filed – Appeal Dismissed

Dr. Stevens moved to find that the Appellant had not responded to the show cause order and that the recommended order be accepted dismissing the appeal for failure to timely prosecute the appeal. Ms. Cloyd seconded and the motion carried 6-0.

A. **Adam Hayes v. Transportation Cabinet**

11. **WITHDRAWALS**

Mr. Hutcheson moved to accept the following withdrawal of appeals *en bloc* and to dismiss the appeals. Dr. Stevens seconded and the motion carried 6-0.

- A. Daniel R. Woosley v. Justice and Public Safety Cabinet/Corrections
- B. Karen Nichols v. Cabinet for Health and Family Services
- C. Benny Stump v. Transportation
- D. Michael Mateja v. Kentucky State Fair Board

12. **SETTLEMENTS**

Ms. Cloyd moved to issue settlement orders and to sustain the appeals to the extent set forth in the settlements as submitted by the parties. Dr. Stevens seconded and the motion carried 6-0.

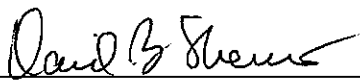
- A. Stephanie Cuave v. Cabinet for Health and Family Services (2 appeals)
- B. Jason Driskell v. Cabinet for Health and Family Services
- C. Regina Martin v. Justice and Public Safety Cabinet/Corrections
- D. William Ware v. Tourism, Arts and Heritage Cabinet/Parks
- E. Larry Thomas v. Cabinet for Health and Family Services

13. **OTHER**

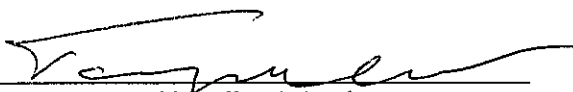
There being no further business, Dr. Stevens moved to adjourn. Mr. Hutcheson seconded and the motion carried 6-0. (12:10 p.m.)



Wayne D. Sapp, Chairman


Larry Gillis, Vice Chairman


David B. Stevens, Member

David F. Hutcheson, Member


Tommy W. Chandler, Member


Amanda Cloyd, Member

**COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2015-023**

RICHARD CHAD LANHAM

APPELLANT

**FINAL ORDER
ALTERING HEARING OFFICER'S
VS. FINDINGS OF FACT, CONCLUSIONS OF LAW
AND RECOMMENDED ORDER**

**CABINET FOR HEALTH AND FAMILY SERVICES
J.P. HAMM, APPOINTING AUTHORITY**

APPELLEE

** ** ** ** **

The Board at its regular September 2015 meeting having considered the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer dated July 17, 2015, Appellee's exceptions, oral arguments and being duly advised,

IT IS HEREBY ORDERED that the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer be altered as follows:

A. **Delete** Background number 3 and substitute the following:

3. Appellant had previously raised the issues of age and gender discrimination against him; however, in his opening statement, Appellant made clear he was not pursuing the action taken against him on these legal bases, but rather felt that his character and reputation had been impugned. The Hearing Officer informed all parties that the Personnel Board did not have jurisdiction of what amounted to an apparent defamation claim.

B. **Delete** Finding of Fact number 4 and substitute the following:

4. The Board finds the comments alleged by the Appellee in its letter of suspension, and not disputed by the Appellant, were offensive and should not have been made. Although Appellant argued correctly his supervisor never corrected these comments when he made them, that did not excuse Appellant's conduct; the comments were wrong in and of themselves.

C. Add Conclusion of Law number 3:

3. The Board concludes that the Appellee carried its burden of proof in showing that the Appellant's comments as alleged in the letter of suspension were offensive.

D. Delete the Recommended Order, and substitute the following:

IT IS HEREBY ORDERED that the appeal of **RICHARD CHAD LANHAM V. CABINET FOR HEALTH AND FAMILY SERVICES (APPEAL NO. 2015-023)** be **SUSTAINED to the extent** that the ten-day suspension without pay be reduced to a five-day suspension without pay. Appellant shall be restored all pay, benefits, and otherwise be made whole with respect to the restoration of five working days. The Board orders Appellee shall reimburse the Appellant for any leave time he used attending the evidentiary hearing and any pre-hearing conferences at the Personnel Board. [KRS 18A.105, KRS 18A.095(25) and 200 KAR 12.030.]

IT IS FURTHER ORDERED that the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer as Altered be, and they hereby are, approved, adopted and incorporated herein by reference as a part of this Order and the Appellant's appeal is **SUSTAINED to the extent herein**.

The parties shall take notice that this Order may be appealed to the Franklin Circuit Court in accordance with KRS 13B.140 and KRS 18A.100.

SO ORDERED this 16th day of September, 2015.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK, SECRETARY

A copy hereof this day mailed to:

Hon. Mona Womack
Richard Chad Lanham
J.P. Hamm